

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 1295 OF 1997

WITH

LETTERS PATENT APPEAL NO 1297 OF 1997

WITH

LETTERS PATENT APPEAL NO 1340 OF 1997

IN

SPECIAL CIVIL APPLICATION NO 2898 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DEODAR TALUKA PANCHAYAT

Versus

BHIKHALAL AMRITLAL SHAH

Appearance:

1. LETTERS PATENT APPEAL NO. 1295 OF 1997

MR HS MUNSHAW for Appellant.

MR BR PARIKH for Res.No.1.

MR BN PATEL for Res.No.2.

MR DA BAMBHANIA for Res.Nos.3 TO 6

2. LETTERS PAGENT APPEAL NO. 1297 OF 1997.

MR BN PATEL for appellant.

MR BR PARIKH for Res.No.1.

MR HS MUNSHAW for Res.No.2.

MR DA BAMBHANIA AGP for Res.Nos. 3 TO5.

3. LETTERS PATENT APPEAL NO 1340 OF 1997

MR DA BAMBHANIA AGP for appellant.

MR BR PARIKH for Res.No.1.

MR BN PATEL for Res.No.2.

MR HS MUNSHAW for Res.Nos 3 to 5.

CORAM : MR.JUSTICE C.K.THAKKER and

MISS JUSTICE R.M.DOSHIT

Date of decision: 22/10/97

ORAL JUDGEMENT

Admitted. Learned counsel appearing for respondents in respective Letters Patent Appeals appear and waive service of notice of admission. In the facts and circumstances of the case, these Letters Patent Appeals are taken up for final hearing today.

All these appeals arise out of a common interim order passed by the learned Single Judge in Special Civil Application No. 2898 of 1997. The said petition was filed by Shri Bhikhabhai Amrutlal Shah respondent No.1 in all these Letters Patent Appeals. The grievance voiced by him was that even though he retired in April, 1993, on reaching the age of superannuation as a Panchayat employee working as Clerk in Deodar Gram Panchayat, he was not paid his pension, gratuity and other retiral benefits. Though period of three years passed, he was not paid retiral dues, and, hence. he was constrained to approach this court.

It appears that the petition was filed on April 11, 1997. On April 23, 1997, Rule was issued. Notice was issued as to interim relief returnable on August 20, 1997. Thereafter, time was sought by the respondents, which was granted and the matter was adjourned to September 3, 1997; September 10, 1997 and ultimately on September 24, 1997, interim order was passed, which is impugned in the present Letters Patent Appeals. By the impugned order, the learned Single Judge directed the respondents to pay all retiral benefits to the petitioner, failing which the Sarpanch of the Gram Panchayat, Taluka Development Officer and Development Commissioner to remain personally present on October 16, 1997. Immediately thereafter the present Letters Patent Appeals were filed and interim orders were obtained.

On behalf of the appellant, it was contended that

the main matter is admitted, Rule is issued and it is pending for final hearing. The question as to whether the petitioner is or is not entitled to pension, gratuity and retiral benefits, is still to be decided. It was contended on behalf of the Taluka Panchayat as well as on behalf of the State Government that the petitioner was not entitled to pensionary benefits. According to the Gram Panchayat, even if the court finally comes to the conclusion that the petitioner is entitled to pensionary benefits, financial liability is of the State Government and/or of a Taluka Panchayat and/or District Panchayat, but not of the Gram Panchayat. It was also stated that the Gram Panchayat is financially hard-pressed and it is not possible for the Panchayat to pay the amount in case the court comes to the conclusion that the petitioner is entitled to such benefits.

We may clarify that we not expressing any opinion one way or the other regarding merits of the matter. When the petition is admitted, and is pending for final hearing, at the final hearing, the court will pass an appropriate order.

No doubt, Mr. Parikh contended that sufficient time was granted by the learned Single Judge and in spite of that since nothing was done by the respondents, the order came to be passed by the learned Single Judge. He also submitted that so far as Taluka Panchayat and State Government are concerned, they have not filed an affidavit in reply. If in the light of these circumstances, learned Single Judge has passed interim order, it could not be said that such an order is illegal or contrary to law.

In the facts and circumstances of the case, in our opinion no order of mandatory relief could have been passed by the learned Single Judge. It is true that so far the Taluka Development Officer and the State Government has not filed any affidavit, but looking to the correspondence and record, it appears that there is some dispute as to whether the petitioner would be entitled to pensionary benefits. Such question will, obviously, be decided by the learned Single Judge on its own merits, but when the entitlement of the petitioner is not finally concluded, interim order for making payment of amount could not have been passed.

For the foregoing reasons, in our opinion, the order passed by the learned Single Judge deserves to be set aside and is accordingly set aside. All the above Letters Patent Appeals are allowed with no order as to

costs. At the cost of repetition, we may observe that as and when the main matter will be placed before the learned Single Judge, the learned Single Judge will decide the same on its own merits without being influenced in any manner by the observations made in the previous order as well as in these Letters Patent Appeals. Appeals are accordingly disposed of. No costs.

(C.K.THAKKER J)

(MS R.M.DOSHIT J)

JOSHI